

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
WESTERN DIVISION

UNITED STATES OF AMERICA

VERSUS

CRIMINAL ACTION NO. 5:03cr24(01)-DCB

REGINALD ODOM

DEFENDANT

ORDER

This matter comes before the Court on the defendant's Motion for Excusable Neglect [**docket entry no. 240**]. Having considered the Motion, applicable statutory and case law, and being otherwise fully advised in the premises, the Court finds and orders as follows:

On August 22, 2007, the Court's Order of Forfeiture & Nunc Pro Tunc Amendments [docket entry no. 235] was entered in this cause. On November 1, 2007, the defendant Reginald Odom simultaneously filed a Notice of Appeal [docket entry no. 239] and Motion for Excusable Neglect [docket entry no. 240]. The defendant seeks appellate review of the Court's August 22, 2007, Order through his Notice of Appeal, and requests that the Court extend the time for the filing of his Notice of Appeal in his Motion for Excusable Neglect.

Federal Rule of Appellate Procedure 4(b)(1)(A) provides that "[i]n a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of: (i) the

entry of either the judgment or the order being appealed; or (ii) the filing of the government's notice of appeal." In this case, the government has not filed a notice of appeal, and the defendant did not file a notice of appeal within ten days of the Court's August 22, 2007, Order he is seeking to challenge. Therefore, the defendant's November 1, 2007, Notice of Appeal is untimely.

However, Federal Rule of Appellate Procedure 4(b)(4) permits a district court, upon a finding of excusable neglect or good cause, to "extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b)." The period for the defendant's filing of a notice of appeal expired on September 6, 2007 – ten days after the entry of the Court's August 22, 2007, Order which he wishes to appeal; therefore, assuming that the defendant could show excusable neglect or good cause, under Rule 4(b)(4) the Court could only extend the time to file his Notice of Appeal to October 6, 2007. Because the defendant's Motion and Notice of Appeal were not filed until November 1, 2007, the Court is now powerless to grant the defendant an extension of time so that he may timely file his Notice of Appeal.

Accordingly,

IT IS HEREBY ORDERED that the defendant's Motion for Excusable Neglect [**docket entry no. 240**] is **DENIED**.

SO ORDERED, this the 19th day of February 2008.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE